

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

EMPLOYERS MUTUAL CASUALTY )  
COMPANY, an insurance company )  
Incorporated in the State of Iowa, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SUMMERLIN CONSTRUCTION CO., )  
INC., STERLING HUDSON, and )  
CHERI HUDSON )  
 )  
Defendants. )

CIVIL ACTION NUMBER

2:07 cv 322-WHA

ANSWER OF DEFENDANT SUMMERLIN CONSTRUCTION CO., INC.

For its answer to the Complaint, Summerlin Construction Co., Inc., (hereinafter  
“Summerlin”) states the following:

**AFFIRMATIVE DEFENSES**

For its affirmative defenses to the Complaint for Declaratory Judgment,  
Defendant Summerlin pleads the following:

**FIRST DEFENSE**

The Amended Complaint fails to state a claim for which relief can be granted.

**SECOND DEFENSE**

The Plaintiff’s Complaint is barred by the doctrines of waiver and/or estoppel.

**THIRD DEFENSE**

Summerlin generally denies each and every material allegation of the Complaint  
and demands strict proof thereof.

**FOURTH DEFENSE**

This Court lacks jurisdiction as there is no ripe controversy.

**FIFTH DEFENSE**

This action is moot. The underlying suit was dismissed.

**SIXTH DEFENSE**

This action should be dismissed as there is no longer any underlying suit pending. There are no current “allegations” and any possible future allegations are unknown, uncertain, and speculative. The Court cannot speculate as to what they may be. Thus there are no current allegations or claims to compare with the language of the insurance policy at issue to determine the issue of coverage.

**ANSWER**

**I. Parties, Jurisdiction and Venue**

1. Summerlin lacks sufficient information to admit or deny the allegation.
2. Admitted
3. Admitted.
4. Admitted.
5. Denied. The underlying action was dismissed.
6. Denied.
7. Denied. The underlying action was dismissed.
8. Denied. The underlying action was dismissed.
9. Denied. The underlying action was dismissed.
10. Denied.

11. Denied

UNDERLYING LAWSUIT

12. Denied. The underlying action has been dismissed. There are no allegations.

13. Denied.

POLICY PROVISIONS

14. Admitted.

CLAIMS FOR RELIEF

15. Denied.

16. Regarding the allegations of paragraph 16, Summerlin lacks sufficient knowledge about the desires of EMCC to admit or deny the allegation. Summerlin denies that the Plaintiff will be exposed to any avoidable injury.

17. Regarding the allegations of paragraph 17, Summerlin denies that the Plaintiff is entitled to any of the relief requested in any of subparagraphs a., b., c., d., or e.

/s/ Donald R. Jones, Jr.

Donald R. Jones, Jr.

ASB-8900-067D

Attorney for Defendant Summerlin  
Construction Co., Inc.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: James A. Kee and Cynthia A. Martin, KEE & SELBY, L.L.P., 1900 International park Drive, Suite 220, Birmingham, Alabama 35243.

/s/ Donald R. Jones, Jr.  
Donald R. Jones, Jr.